

By: Leach

H.B. No. 3250

Substitute the following for H.B. No. 3250:

By: Elkins

C.S.H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

relating to civil works projects and other construction projects of governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.0525 to read as follows:

Sec. 2269.0525. PREQUALIFICATION PROCESS FOR CIVIL WORKS PROJECTS. (a) In this section, "civil works project" has the meaning assigned by Section 2269.351.

(b) A governmental entity may implement a prequalification process to eliminate unqualified offerors from consideration for a civil works project under a method authorized by this chapter. A governmental entity that implements a prequalification process under this section shall advertise or publish notice of the prequalification process along with a request for qualifications in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(c) If a governmental entity considers a contract for a civil works project using competitive bidding under this chapter, in implementing a prequalification process under Subsection (b), the governmental entity:

(1) may not rank potential offerors; and

1 (2) shall determine if any potential offerors meet
2 minimum qualification requirements for completing the civil works
3 project.

4 (d) A governmental entity may consider the following
5 factors during the prequalification process:

6 (1) the potential offeror's experience with other
7 construction projects for the governmental entity;

8 (2) the potential offeror's commercial and financial
9 history and stability;

10 (3) the potential offeror's ability to self-perform
11 the construction project services;

12 (4) the potential offeror's familiarity and experience
13 with subcontractors and suppliers in the area served by the
14 governmental entity;

15 (5) whether the potential offeror has been involved in
16 litigation related to a construction project during the preceding
17 five years;

18 (6) the potential offeror's ability and capacity to
19 provide performance and payment bonds;

20 (7) whether the potential offeror has ever failed to
21 complete a project for a governmental entity;

22 (8) the potential offeror's experience with
23 construction projects of similar size and scope; and

24 (9) the qualifications and experience of the potential
25 offeror's proposed project team.

26 SECTION 2. Section [2269.055](#), Government Code, is amended to
27 read as follows:

1 Sec. 2269.055. CRITERIA TO CONSIDER. (a) In determining
2 the award of a contract under this chapter, the governmental entity
3 may consider:

4 (1) the price;

5 (2) the offeror's experience with similar construction
6 projects and reputation;

7 (3) the quality of the offeror's goods or services;

8 (4) the impact on the ability of the governmental
9 entity to comply with rules relating to historically underutilized
10 businesses;

11 (5) the offeror's safety record;

12 (6) the offeror's proposed personnel;

13 (7) whether the offeror's financial capability is
14 appropriate to the size and scope of the project; and

15 (8) any other relevant factor specifically listed in
16 the request for bids, proposals, or qualifications.

17 (b) In determining the award of a contract under this
18 chapter, the governmental entity shall:

19 (1) consider and apply any existing laws, including
20 any criteria, related to historically underutilized businesses;

21 [~~and~~]

22 (2) consider and apply any existing laws, rules, or
23 applicable municipal charters, including laws applicable to local
24 governments, related to the use of women, minority, small, or
25 disadvantaged businesses; and

26 (3) consider good faith efforts to comply with laws,
27 rules, or applicable municipal charters described by Subdivision

1 (2).

2 (c) In this section, "good faith effort" means documented
3 evidence of outreach to enlist services, or bids and proposals,
4 from available, certified, and qualified businesses.

5 SECTION 3. Section 2269.056(b), Government Code, is amended
6 to read as follows:

7 (b) The governmental entity shall base its selection among
8 offerors on applicable criteria listed for the particular method
9 used. The governmental entity shall publish in the request for
10 proposals or qualifications the:

11 (1) criteria that will be used to evaluate the
12 offerors;

13 (2) [~~, and the~~] applicable weighted value for each
14 criterion; and

15 (3) detailed methodology for scoring each criterion.

16 SECTION 4. Subchapter B, Chapter 2269, Government Code, is
17 amended by adding Section 2269.0565 to read as follows:

18 Sec. 2269.0565. EXPLANATION OF EVALUATION AND RANKING. (a)
19 An offeror who submits a bid, proposal, or qualification for a
20 construction contract under this chapter and who is not awarded the
21 contract may make a request in writing to the governmental entity to
22 provide an explanation of its evaluation and, if applicable,
23 ranking of the offeror's submission if the submission was:

24 (1) evaluated or ranked differently than a comparable
25 submission from the offeror to the governmental entity during the
26 preceding year;

27 (2) developed using the same data that was used to

1 develop the offeror's previous submission; and

2 (3) evaluated or ranked using the same criteria that
3 was used to evaluate or rank the offeror's previous submission.

4 (b) Not later than the 30th day after the date a request is
5 made under Subsection (a), the governmental entity shall deliver to
6 the offeror a written explanation of its evaluation and, if
7 applicable, ranking of the offeror's submission, including an
8 explanation of why the submission was evaluated or ranked
9 differently than the offeror's previous submission to the
10 governmental entity.

11 SECTION 5. Section 2269.103, Government Code, is amended to
12 read as follows:

13 Sec. 2269.103. PREPARATION OF REQUEST. (a) The
14 governmental entity shall prepare a request for competitive bids
15 that includes construction documents, estimated budget, project
16 scope, estimated project completion date, and other information
17 that a contractor may require to submit a bid.

18 (b) Before preparing a request for competitive bids under
19 Subsection (a), a governmental entity may use the prequalification
20 process for civil works projects described by Section 2269.0525.

21 SECTION 6. Section 2269.153, Government Code, is amended to
22 read as follows:

23 Sec. 2269.153. PREPARATION OF REQUEST. (a) The
24 governmental entity shall prepare a request for competitive sealed
25 proposals that includes construction documents, selection criteria
26 and the weighted value for each criterion, estimated budget,
27 project scope, estimated project completion date, and other

1 information that a contractor may require to respond to the
2 request.

3 (b) Before preparing a request for competitive sealed
4 proposals under Subsection (a), a governmental entity may use the
5 prequalification process for civil works projects described by
6 Section 2269.0525.

7 SECTION 7. The change in law made by this Act applies only
8 to a contract for which a governmental entity first advertises or
9 otherwise solicits bids, proposals, offers, or qualifications or
10 makes a similar solicitation on or after the effective date of this
11 Act. A contract for which a governmental entity first advertises or
12 otherwise solicits bids, proposals, offers, or qualifications or
13 makes a similar solicitation before the effective date of this Act
14 is governed by the law in effect on the date the advertisement or
15 solicitation is made, and that law is continued in effect for that
16 purpose.

17 SECTION 8. This Act takes effect September 1, 2017.